

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Federal Asset Recovery, Inc.

AGREED ORDER

No. DE 3373

TO: Federal Asset Recovery, Inc
William A. Looney, President
P.O. Box 1435
Tacoma, WA 98401

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Federal Asset Recovery, Inc. (Federal Asset) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires Federal Asset Recovery, Inc. to compile data and perform other tasks necessary to submit a Site Summary Report and, if warranted, a remedial investigation, feasibility study, and cleanup action plan. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the authority of the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such Party to comply with the Order. Ecology and Federal Asset agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Federal Asset's responsibility under this Order. Federal Asset shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms used in this Order.

1. Site: The Site is generally located at 1147 Dock Street, Tacoma, Washington. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is more particularly

described in Exhibit A to this Order, which includes a detailed Site diagram. The Site constitutes a "facility" under RCW 70.105D.020(4).

2. Parties: Refers to the State of Washington, Department of Ecology and Federal Asset Recovery, Inc. (Federal Asset).

3. PLP: Refers to Federal Asset Recovery, Inc.

4. Agreed Order or Order: Refers to this Order and each of the exhibits to the Order. All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to the Order.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by Federal Asset:

1. The facility is a vacant property located at 1147 Dock Street in Tacoma, Washington, Pierce County tax parcel number 8950001971.

2. The Site is listed on the Department of Ecology's Hazardous Sites List as "1147 Dock Street." The Site is ranked a "0," indicating a high priority for Ecology action because of its status as a source of contaminants to the Commencement Bay Nearshore/Tideflats (CBN/T) Superfund Site.

3. The property at 1147 Dock Street is owned by Federal Asset Recovery, Inc. The Pierce County Assessor's Office sales records database shows the property was purchased by Federal Asset Recovery, Inc. on December 1, 1999, from the Pierce County Assessor/Treasurer. The taxpayer name listed on the Pierce County Assessor's Office tax parcel database is Federal Asset Recovery, Inc.

4. From 1923 until 1980, the Consumer Central steam heat generating plant was located on the property. Prior to 1923 the property was used as a building supply warehouse. The heating plant burned mill tailings/sawdust from local woodworking mills until 1965 when it began using bunker C oil. All structures on the Site were demolished in 1980, and the Site has remained unused except for parking since then.

5. The Site is located within the boundaries of the CBN/T Superfund site.

6. As a part of its duties under a cooperative agreement with the U.S. Environmental Protection Agency to find and control sources of contaminants to the CBN/T Superfund Site, Ecology conducted an inspection of the 1147 Dock Street Site in 1993, and discovered a non-soil fill material located along the bank of the Site in contact with Thea Foss Waterway. Between 1993 and 1997 Ecology obtained six samples of the fill, which was found to contain levels of mercury above the Commencement Bay Sediment Quality Objectives (0.59 mg/kg) and State of Washington Marine Sediment Quality Standards (0.41 mg/kg). The highest level of mercury found in the samples was 38.3 mg/kg. In addition to the mercury exceedances, one sample exceeded the sediment quality objective for lead, and one sample exceeded the sediment quality objective for zinc. The contaminated fill material was in contact with Thea Foss Waterway and Ecology determined it was a source of mercury contamination to the waterway. The contaminated fill material was visually identified in the northern two-thirds of the Site shoreline. J.S. Jones and Associates also obtained some samples of the north shore fill material for a former Site owner. The results of those samples were informally submitted to Ecology in the form of the lab analysis reports, but without maps or narrative explaining the sampling or showing locations. Those samples contained between 0.116 and 14.3 mg/kg of mercury, and 2720 mg/kg total petroleum hydrocarbons.

7. Ecology obtained four samples from the south shoreline in March 1997 to evaluate possible mercury contamination in that area. The soils there did not appear to contain the same fill material that was present along the north shoreline. None of the four samples exceeded the Commencement Bay Sediment Quality Objective of 0.59 mg/kg or the MTCA, Method A unrestricted soil cleanup standard of 2 mg/kg for mercury.

8. Two 35,000-gallon bunker C oil tanks were removed from the Site in 1992 by the Investco Financial Corporation, a previous Site owner. Two reports by Hart Crowser and Associates, dated May 4, 1993, and November 21, 1994, summarize the tank removal and subsequent soil sampling and monitoring well installation. Confirmation soil samples from those

studies did not contain petroleum hydrocarbons above the MTCA, Method A unrestricted use soil cleanup levels. Polyaromatic hydrocarbon levels were tested in one site boring and were found at 0.158 ppm (Total Benzo(a)Pyrene equivalents), compared to the MTCA, Method A unrestricted soil cleanup standard of 0.1 ppm. No petroleum was detected in groundwater, but groundwater sample reporting limits were not low enough to compare to the MTCA, Method A groundwater cleanup levels.

9. In 1995 and 1996 Ecology issued enforcement orders to two prior Site owners for conducting remedial investigations and conducting interim cleanup actions of the embankment fill to prevent further contamination from reaching Thea Foss Waterway. When no action was taken on the part of the liable parties, Ecology decided to utilize State Toxics Control Account funds to conduct the interim action directly. This action was necessary to control the contaminant source prior to the start of Superfund cleanup efforts for the Thea Foss Waterway which were slated to begin in 1999.

10. In August 1997, after completing a competitive bid process, Ecology contracted with Smith Technology to remove the contaminated fill from the northern portion of the shoreline at the Site. The project was designed by an Ecology staff registered professional engineer. The interim action was conducted between August 13, 1997, and approximately August 31, 1997. The interim action is described in the report entitled *Pacific Trustee (1147 Dock Street) Interim Action Cleanup Report*, March 30, 1998, located in Ecology's file. The interim action included removal of approximately 1,000 tons of contaminated fill and soils, which were disposed of at the Olympic View Landfill. The excavation extended to the 0 foot mean lower low water tide level (0' MLLW) but did not remove all of the fill material. Confirmation samples obtained from the excavated surface contained elevated levels of mercury and polyaromatic hydrocarbons. The excavated slope was then covered with a geotextile fabric and backfilled with 1,400 tons of quarry spalls and rip-rap. The remnant contaminants are confined beneath the fabric and backfill.

11. As part of the federal Superfund cleanup actions in Thea Foss Waterway, a 36-inch thick slope cap was applied to the shoreline in front of the 1147 Dock Street Site, blending with and partly covering Ecology's interim action shoreline remediation.

VI. ECOLOGY DETERMINATIONS

1. Federal Asset is an "owner or operator" as defined in RCW 70.105D.020(12), of a "facility" as defined in RCW 70.105D.020(4), because Federal Asset is the owner of the property.

2. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site.

3. Based upon credible evidence, Ecology issued a potentially liable person (PLP) status letter to Federal Asset dated April 25, 2006, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that Federal Asset is a PLP under RCW 70.105D.040 and notified Federal Asset of this determination by letter dated May 25, 2006.

4. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

5. While interim remedial actions at the Site have been implemented to prevent recontamination of Thea Foss Waterway, underground tanks removed, and some limited site investigations have occurred, no remedial investigation, feasibility study, or cleanup action plan have been completed. Additional information is now necessary to complete the characterization of the Site and to determine whether interim cleanup actions constitute a final cleanup action,

meeting the requirements of WAC 173-340 Part III, or whether additional remedial action is needed.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that Federal Asset take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

A. Site Summary Report

1. Scope of Work

Compile and summarize in a report all existing information about the Site history, geology, potential contaminant sources, past soils and groundwater investigations, completed interim actions, nature and extent of remaining contamination, and identify additional information needed to complete a remedial investigation and feasibility study in accordance with WAC 173-340-350. In light of interim remedial actions already taken at the Site, the summary report will document whether those actions have met the minimum requirements for cleanup actions under WAC 173-340-360 and whether additional remedial action is necessary for the Site.

All work shall be completed utilizing professionals qualified to perform the tasks required and, when applicable, in accordance with WAC 308-15-020. This summary report shall include, at a minimum:

- (a) Maps showing sample locations and depths.
- (b) Tables showing results of investigations and confirmation samples and comparison with applicable cleanup levels.
- (c) A discussion of sampling procedures, analytical methods, and quality control procedures.
- (d) Laboratory analytical results sheets.
- (e) Boring logs.

(f) Documentation of exclusion from Terrestrial ecological assessment per WAC 173-340-7490.

(g) Geology and groundwater system characteristics.

(h) Description of pathways for contaminants to affect human health and the environment.

(i) Maps and narrative description of Site interim cleanup actions, including disposition of any materials removed from the Site.

(j) Description of nature and extent of remaining contaminants in soil and groundwater, including maps showing sampling locations and results, and narrative discussion.

(k) Identification of any data gaps that need to be filled to complete a Site remedial investigation or feasibility study equivalent to the requirements of WAC 173-340-350.

(l) A discussion of whether interim cleanup actions meet the minimum requirements for cleanup actions under WAC 173-340-360 and whether additional remedial action is necessary for the Site, the extent to which institutional controls are necessary for the Site, and including a discussion of applicable cleanup levels and points of compliance.

(m) Copies of all environmental reports or other environmental information that has been generated for this site and that are known to Federal Asset, its employees and officers, and consultants.

2. Schedule

Within 90 days of the effective date of this order.

B. Remedial Investigation/Feasibility Study

Ecology, subject to the requirements of the Model Toxics Control Act Chapter 70.105D RCW and Cleanup Regulations Chapter 173-340 WAC (hereinafter collective termed "MTCA") will determine if the information submitted in the Site summary report is adequate to complete the Site remedial investigation, and whether Site interim actions are equivalent to a final cleanup action. If Ecology, subject to MTCA, determines that the Site has been adequately characterized, and that the interim remedial actions meet the substantive requirements of the MTCA and are

equivalent to a final cleanup action, no remedial investigation or feasibility study will be required.

1. Scope of Work

If Ecology determines, subject to MTCA, that additional information is necessary to complete the remedial investigation and/or complete a feasibility study, the PLP shall submit a work plan for completion of the remedial investigation and/or feasibility study (RI/FS). The work plan shall include all necessary elements to complete the RI/FS according to WAC 173-340-350. The work plan shall also include a schedule for completion of the RI/FS activities and reporting. The work plan and schedule shall be subject to Ecology's written approval.

2. Schedule

(a) Ecology shall provide a written determination of whether the site has been adequately characterized, whether the interim remedial actions meet the substantive requirements of the MTCA and are equivalent to a final cleanup action, and whether a RI/FS is necessary.

(b) The work plan for the RI/FS, if required, shall be submitted within 60 days of receiving Ecology's written determination.

(c) The RI/FS work shall be complete and the report, including electronic and hard copy results of any sampling, laboratory results, or other test results, shall be submitted to Ecology within 120 days of receiving Ecology's written determination.

C. Cleanup Action Plan (CAP)

If the Ecology, subject to the MTCA, determines that the Site summary report or the RI/FS indicate that no further remedial action is necessary, no cleanup action plan will be required. If Ecology determines, subject to MTCA, that further remedial action is necessary, Ecology shall notify the PLP of Ecology's determinations, and the PLP shall develop a cleanup action plan (CAP).

1. Scope of Work

The draft CAP shall include a general description of the proposed remedial action, cleanup levels, rationale for cleanup levels, an implementation schedule, description of any

institutional controls proposed, a draft restrictive covenant, and a summary of applicable local and state laws pertinent to the proposed cleanup action.

2. Schedule

The draft Cleanup Action Plan shall be submitted to Ecology within 60 days of receiving Ecology's written notification that a cleanup action plan is necessary.

D. Exchange of Drafts

Ecology and Federal Asset agree to operate in good faith and in a timely manner to exchange comments on drafts. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this section, Ecology may complete and issue the final deliverable.

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notices

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order, subject to written consent by Federal Asset, should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

B. Remedial Action Costs

1. Past Costs

Ecology incurred costs in the amount of \$179,562 to implement the interim action discussed in Section V of this Order. Interest has accrued on these costs to date in the amount of \$254,423. Federal Asset alleges that it is not liable for the costs incurred by Ecology. Ecology disputes Federal Asset's position. Ecology is willing to compromise this past debt in order to facilitate characterization of the Site and further cleanup, if warranted. Ecology will accept the amount of \$300,000 as payment in full for all costs incurred by Ecology plus accrued interest up through May 11, 2006. Federal Asset will, within 7 days of notice of execution of this order by Ecology, execute a promissory note in favor of Ecology in the form as set forth in Exhibit B.

The note shall accrue interest at twelve percent (12%) per annum, compounded monthly, and be due in full within one year of the date of the note. Federal Asset shall give Ecology a security interest in the property known as 1147 Dock Street in the form of a deed of trust as set forth in Exhibit C. The legal description for the property is set forth in the current Deed of Trust. Federal Asset shall provide to Ecology and pay for a lenders/mortgagee's title insurance policy in favor of Ecology in the amount of \$300,000. This title insurance policy must show that the deed of trust in favor of Ecology is senior to all other liens or monetary encumbrances. Federal Asset shall arrange to pay all property taxes due on the property current and shall arrange to have William A. Looney, the holder of the current Deed of Trust on the property, execute a subordination of that Deed of Trust in favor of Ecology's deed of trust, giving Ecology priority over the Looney encumbrance. The Looney subordination shall be in the form as set forth in Exhibit D.

2. Future Costs

Federal Asset shall pay to Ecology costs incurred by Ecology that arise after May 11, 2006, consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. Federal Asset shall pay the required amount within 90 days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within 30 days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

3. Deposit

Federal Asset agrees to deposit the amount of \$5,000 with Ecology at the time Federal Asset executes this Order, to be held by Ecology and applied to the costs of title insurance,

recording the deed of trust, recording the subordination agreement and such other costs incurred by Ecology pursuant to Section VIII.B. This deposit shall not be deemed a limitation on the costs for which Federal Asset is liable under this Order. Upon request, Ecology shall present to Federal Asset an itemized statement identifying the amounts withdrawn and the service for which the amounts were spent. Any balance of the deposit remaining after Ecology pays its costs shall be returned to Federal Asset. In the event Ecology's costs exceed the amount on deposit, Federal Asset shall pay such amount due within thirty (30) days of invoice as provided in Section VIII.B.2.

C. Implementation of Remedial Action

Except where necessary to abate an emergency situation, Federal Asset shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Joyce Mercuri
Department of Ecology
Southwest Regional Office
P. O. Box 47775
Olympia, WA 98504-7775

The project coordinator for Federal Asset is:

Mr. Jeffrey Jones
J.S. Jones and Associates, Inc.
402 E. Main, Suite 110
Auburn, Washington 98002
Phone: 253-804-2645
Fax: 253-333-8584

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. The Ecology project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and Federal Asset, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinator(s).

Ecology and Federal Asset may change their respective project coordinator, but must provide 10 days advance written notification of the change to the other party.

E. Performance

All work performed pursuant to this Order shall be under the direction and supervision of professionals as may be required by MTCA.

F. Access

Ecology or any Ecology authorized representative shall have full authority to enter and freely move about all property at the Site that Federal Asset either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing Federal Asset's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Federal Asset. Federal Asset shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Federal Asset where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by Federal Asset unless an emergency prevents such notice. All persons who access the Site pursuant to this paragraph shall comply with the approved health and safety plan, if any. Ecology employees and their representative shall not be required to sign any release or waiver as a condition of site property access.

G. Sampling, Data Reporting, and Availability

With respect to the implementation of this Order, Federal Asset shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology and shall submit these results in accordance with Section VII of this Order. All sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with 173-340-840(5) WAC and Ecology Toxics Cleanup Program Policy 840 (Data Submittal

Requirements). This data requirement shall apply to any new data generated for work conducted under this Order; it shall not apply to data collected prior to the date of this Order.

If requested by Ecology, Federal Asset shall allow split or duplicate samples to be taken by Ecology and/or its authorized representative of any samples collected by Federal Asset pursuant to implementation of this Order. Federal Asset shall notify Ecology 7 days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order to be taken by Federal Asset or its authorized representative provided it does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F of this Order, Ecology shall notify Federal Asset prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

H. Public Participation

A public participation plan is required for this Site. Ecology shall review any existing public participation plan to determine its continued appropriateness and whether it requires amendment, or if no plan exists, Ecology shall develop a public participation plan alone or in conjunction with Federal Asset.

Ecology shall maintain the responsibility for public participation at the Site. However, Federal Asset shall cooperate with Ecology by:

1. Notify Ecology's project coordinator prior to any of the following: the issuance of all press releases; distribution of fact sheets; performance of other outreach activities; meetings with the interested public and/or local governments. Likewise, Ecology shall notify Federal Asset prior to the issuance of all press releases and fact sheets, and before meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by Federal Asset that do not receive prior Ecology approval, Federal Asset shall

clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology;

2. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- (a) Citizens for a Healthy Bay
917 Pacific Avenue Suite
Tacoma, WA 98402
- (b) Tacoma Public Library – Main Branch
Northwest Room
1102 Tacoma Avenue South
Tacoma, WA 98402
- (c) Department of Ecology
Southwest Regional Office
300 Desmond Drive
Lacey, WA 98503

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

I. Retention of Records

During the pendency of this Order and for ten (10) years from the date of completion of work performed pursuant to this Order, Federal Asset shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, Federal Asset shall make all records available to Ecology and allow access for review within a reasonable time.

J. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, the Parties shall utilize the dispute resolution procedure set forth below.

(a) Upon receipt of the Ecology project coordinator's decision, Federal Asset has 14 days within which to notify Ecology's project coordinator of its objection to the decision.

(b) The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within 14 days, Ecology's project coordinator shall issue a written decision.

(c) Federal Asset may then request Ecology management review of the decision. This request shall be submitted in writing to the Southwest Region Toxics Cleanup Section Manager within 7 days of receipt of Ecology's project coordinator's decision.

(d) The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within 60 days of Federal Asset's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

K. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least 30 days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify the reason(s) the extension is needed. The request shall specify:

- (a) The deadline that is sought to be extended;
- (b) The length of the extension sought;
- (c) The reason(s) for the extension; and

(d) Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on Federal Asset to demonstrate to the satisfaction of Ecology, that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause includes, but is not limited to:

(a) Circumstances beyond the reasonable control and despite the due diligence of Federal Asset including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by Federal Asset;

(b) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or

(c) Endangerment as described in Section VIII.M of this Order.

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of Federal Asset.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give Federal Asset written notification in a timely fashion of any extensions granted pursuant to the Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.L when a schedule extension is granted.

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding 90 days only as a result of:

(a) Delays in the issuance of a necessary permit which was applied for in a timely manner;

(b) Other circumstances deemed exceptional or extraordinary by Ecology; or

(c) Endangerment as described in Section VIII.M of this Order.

L. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within 7 days of verbal agreement.

Except as provided in Section VIII N of this Order, substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and Federal Asset. Federal Asset shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to the Order represents a substantial change, Ecology will provide additional public notice and opportunity to comment. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII J of this Order.

M. Endangerment

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct Federal Asset to cease such activities for such period of time as it deems necessary to abate the danger. Federal Asset shall immediately comply with such direction.

If, for any reason, Federal Asset determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, Federal Asset may cease such activities. Federal Asset shall notify Ecology's project coordinator as soon as possible, but no later than 24 hours after making such determination or ceasing such activities. Upon Ecology's direction Federal Asset shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Federal Asset's cessation of activities, it may direct Federal Asset to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, Federal Asset's obligations with respect to the ceased activities shall be suspended until Ecology

determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

N. Reservation of Rights

This Order contains a settlement for past remediation costs incurred by Ecology as provided under Section VIII B. This Order is not a settlement under RCW 70.105D.040 for cleanup liability. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. If Federal Asset complies with this Order, and if Ecology determines that the remedial actions conducted at the site meet the substantive requirements of MTCA and that no further remedial actions to protect human health or the environment are necessary, Ecology shall issue Federal Asset a letter confirming the cleanup is complete and that no further remedial actions are required and shall remove the site from the Hazardous Sites List, after the required public comment period.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site, subject to MTCA, should it deem such actions necessary to protect human health and the environment and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

O. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by Federal Asset during the effective term of this Order without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to Federal Asset's transfer of any interest in all or any portion of the Site during the effective term of this Order, Federal Asset shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least 30 days prior to any transfer, Federal Asset shall notify Ecology of said transfer. Upon transfer of any interest, during the effective term of this Order, Federal Asset shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

P. Compliance with Applicable Laws

1. All actions carried out by Federal Asset pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090.

2. Pursuant to RCW 70.105D.090(1), the substantive requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for a remedial action if required under this Order and that are known to be applicable at the time this Order becomes effective are binding and enforceable requirements of this Order.

Federal Asset has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or Federal Asset determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or Federal Asset shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Federal Asset shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by Federal Asset and on how Federal Asset must meet

those requirements. Ecology shall inform Federal Asset in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Federal Asset shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination. Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

3. Pursuant to RCW 70.105D.090(2) in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the state to administer any federal law, the exemption shall not apply and Federal Asset shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

Q. Restrictive Covenants

Pursuant to a consent decree in the matter of *United States v. Atlantic Richfield Company, et al*, entered in the United States District Court for the Western District of Washington, on May 9, 2003, under Civil Action No. C03-5117RJB (Decree) a restrictive covenant, acceptable in form to the United States Environmental Protection Agency (EPA) and Ecology, is necessary to ensure the continued integrity and effectiveness of the shoreline interim action performed by Ecology on the property by preventing future activities within the capped shoreline area that could compromise the interim action and create a new release of mercury to Thea Foss Waterway. Federal Asset is a signatory to this Decree. Federal Asset shall record a covenant on the Property, substantially in form set forth in Exhibit E, within 30 days of this Order.

Additional restrictions may be required consistent with WAC 173-340-440.

R. Periodic Review

If remedial action, including ground water monitoring, continues at the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances.

At least every five years after the initiation of cleanup action at the Site, the Parties shall meet to discuss the status of the Site and the need, if any, for further remedial action at the Site. At least 90 days prior to each periodic review, Federal Asset shall submit a report to Ecology that documents whether human health and the environment are being protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the right to require further remedial action at the Site under appropriate circumstances and subject to MTCA. This provision shall remain in effect for the duration of this Order.

S. Indemnification

Federal Asset agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property arising from or on account of acts or omissions of Federal Asset, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the Federal Asset shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in implementing the activities pursuant to this Order.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon Federal Asset's receipt of written notification from Ecology that Federal Asset has completed the remedial activity required by this Order, as amended by any modifications, and that the Federal Asset has complied with all other provisions of this Agreed Order.

X. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

1. The Attorney General may bring an action to enforce this Order in a state or federal court.
2. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for remedial actions and orders related to the Site.

3. In the event Federal Asset refuses, without sufficient cause, to comply with any term of this Order, Federal Asset will be liable for:

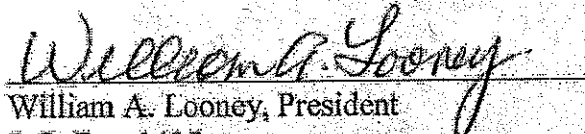
(a) Up to three times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and

(b) Civil penalties of up to \$25,000 per day for each day it refuses to comply.

4. This Order is not appealable to the Washington State Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70.105D.060.

EFFECTIVE date of this Order: _____

FEDERAL ASSET RECOVERY, INC.


William A. Looney, President
P.O. Box 1435
Tacoma, WA 98401

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

Rebecca Lawson
Section Manager
Toxics Cleanup Program
Southwest Regional Office
(360) 407-6241

EXHIBIT A – SITE DIAGRAM



1147 Dock Street,
Tacoma, Washington

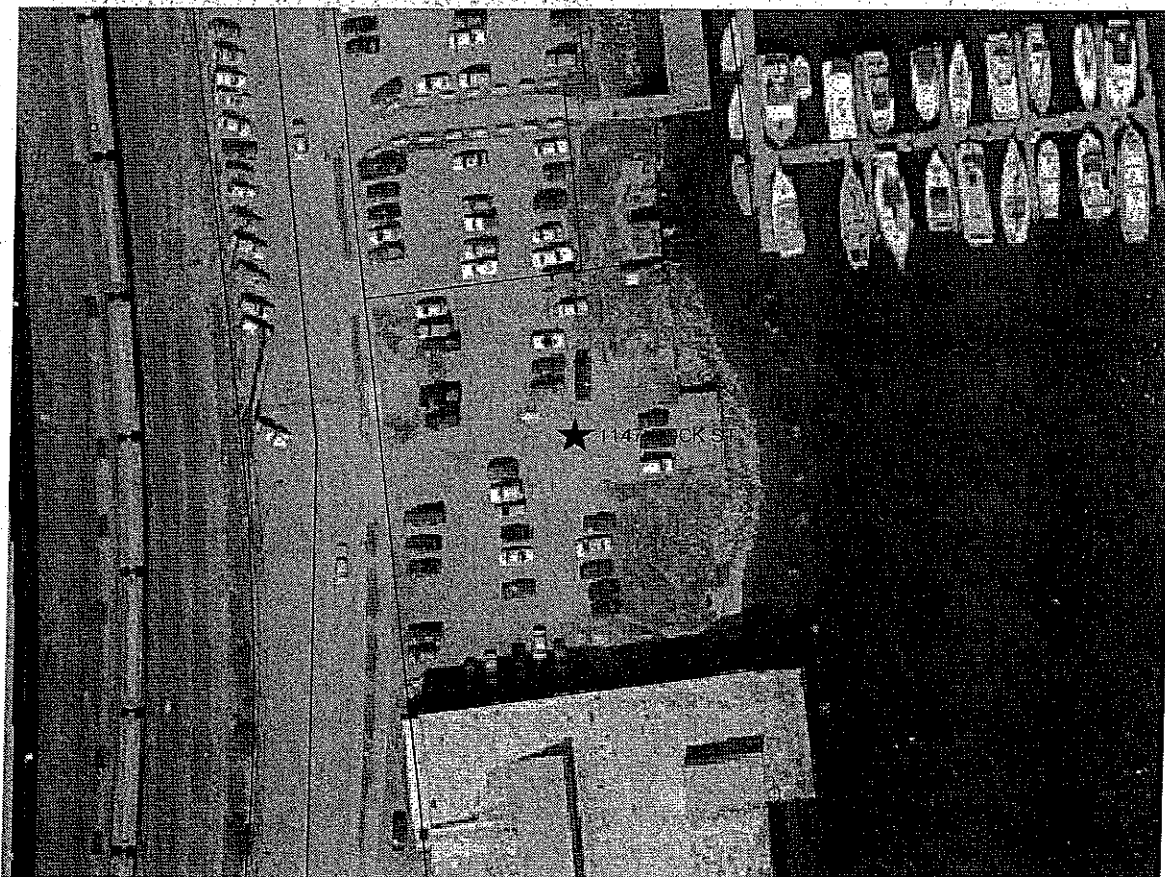


EXHIBIT B
Promissory Note

PROMISSORY NOTE

\$300,000.00
Principal

Date

City

WA
State

FOR VALUE RECEIVED, Federal Asset Recovery, Inc., hereinafter "Maker" promises to pay to State of Washington, Department of Ecology, hereafter "Holder" or order at Department of Ecology, Cashiering Section, P.O. Box 5128, Lacey, WA 98509 or in person at 300 Desmond Drive, Lacey, WA 98503 referencing the Site name and the following identification number: 1T000204, or other such place as may be designated by the Holder from time to time, the principal sum of three hundred thousand U.S. dollars (\$300,000.00), with interest thereon from the date of this Note on the unpaid principal at the rate of twelve percent (12%) per annum, compounded monthly, as provided under WAC 173-340-550(4) as follows:

1. **DUE DATE:** The entire balance of this Note together with any and all interest accrued thereon shall be due and payable in full at the earlier date of (1) 365 days after the above written date of this Note, or (2) upon transfer of the property encumbered by the deed of trust by which this Note is secured.
2. **DEFAULT INTEREST:** After maturity, or failure to make any payment, any unpaid principal shall accrue interest at the rate of twelve percent (12%) per annum, compounded monthly OR the maximum rate allowed by law, whichever is less, during such period of Maker's default under this Note.
3. **ALLOCATION OF PAYMENTS:** Each payment shall be credited first to any interest and the remainder to principal.
4. **PREPAYMENT:** Maker may prepay all or part of the balance owed under this Note at any time without penalty.
5. **CURRENCY:** All principal and interest payments shall be made in lawful money of the United States.
6. **ACCELERATION:** If Maker fails to make any payment owed under this Note, or if Maker defaults under any Deed of Trust or any other instruments securing repayment of this Note, and such default is not cured within 30 days after written notice of such default, then Holder may, at its option, declare all outstanding sums owed on this Note to be immediately due and payable, in addition to any other rights or remedies that Holder may have under the Deed of Trust or other instruments securing repayment of this Note.
7. **ATTORNEYS' FEES AND COSTS:** Maker shall pay all costs incurred by Holder in collecting sums due under this Note after a default, including reasonable attorneys' fees, whether or not suit is brought. If Maker or Holder sues to enforce this Note or obtain a declaration of its rights hereunder, the prevailing party in any such proceeding shall be entitled to recover its reasonable attorneys' fees and costs incurred in the proceeding (including those incurred in any bankruptcy proceeding or appeal) from the non-prevailing party.

8. **WAIVER OF PRESENTMENTS:** Maker waives presentment for payment, notice of dishonor, protest and notice of protest.

9. **NON-WAIVER:** No failure or delay by Holder in exercising Holder's rights under this Note shall be a waiver of such rights.

10. **SEVERABILITY:** If any clause or any other portion of this Note shall be determined to be void or unenforceable for any reason, such determination shall not affect the validity or enforceability of any other clause or portion of this Note, all of which shall remain in full force and effect.

11. **INTEGRATION:** There are no verbal or other agreements which modify or affect the terms of this Note. This Note may not be modified or amended except by written agreement signed by Maker and Holder.

12. **CONFLICTING TERMS:** In the event of any conflict between the terms of this Note and the terms of any Deed of Trust or other instruments securing payment of this Note, the terms of this Note shall prevail.

13. **COMMERCIAL PROPERTY:** Maker represents and warrants to Holder that the sums represented by this Note are being used for business, investment or commercial purposes, and not for personal, family or household purposes.

14. **THIS NOTE IS SECURED BY A DEED OF TRUST OF EVEN DATE.**

Maker
FEDERAL ASSET RECOVERY, INC.

By: _____
Title: _____

Maker's address for all notices given by Holder under this Note: _____

DO NOT DESTROY THIS NOTE

WHEN PAID this original Note together with the Deed of Trust securing the same, must be surrendered to the Trustee for cancellation and retention before any reconveyance can be processed.

EXHIBIT C
Deed of Trust

After Recording Return to:
Joyce Mercuri
Department of Ecology
P.O. Box 47775
Olympia, WA 98504-7775

DEED OF TRUST

Grantor: Federal Asset Recovery, Inc
Grantee: State of Washington, Department of Ecology
Legal: Tacoma Tidelands S ½ L 12, L 13 & 14, & N ½ L 15, B 62 SEG G 0662
Tax Parcel Nos.: 8950001971
Cross Reference:

THIS DEED OF TRUST, made _____, 2006 between
Federal Asset Recovery, Inc. GRANTOR, whose address is _____,
TICOR TITLE COMPANY, TRUSTEE, whose address is 1120 Pacific Avenue, Tacoma, WA
98402, and State of Washington, Department of Ecology, BENEFICIARY, whose address is 300
Desmond Drive, Lacey WA 98503.

WITNESSETH: Grantor hereby bargain(s), sell(s), and convey(s) to Trustee in trust, with power
of sale, the following described real property in Pierce County, Washington:

The south half of lot 12, all of lots 13 and 14, and the north half of lot 15, block 62, map of the
Tacoma Tide Lands as surveyed and platted by the Board of tide Land Appraisers for Pierce
County, according to the Plat filed for record September 14, 1895, in the office of the County
Auditor, in Pierce County, Washington. Commonly known as 1147 East Dock Street, Tacoma,
WA 98402

Assessor's Property Tax Parcel/Account Number: 895000-197-1 which real property is not used
principally for agricultural or farming purposes, together with all the tenements, hereditaments,
and appurtenances now or hereafter thereunto belonging or in any wise appertaining, and the
rents, issues, and profits thereof.

This deed is for the purpose of securing performance of each agreement of Grantor(s) herein
contained, and payment of the sum of THREE HUNDRED THOUSAND Dollars (\$300,000.00)
with interest, in accordance with the terms of a promissory note of even date herewith, payable to
Beneficiary or order, and made by Grantor(s), and all renewals, modifications, and extensions
thereof, and also such further sums as may be advanced or loaned by Beneficiary to Grantor(s),
or any of his/her/their successors or assigns, together with interest thereon at such rate as shall be
agreed upon.

To protect the security of this Deed of Trust, Grantor(s) covenant(s) and agree(s):

1. To keep the property in good condition and repair; to permit no waste thereof; to complete any building, structure, or improvement being built or about to be built thereon; to restore promptly any building, structure, or improvement thereon which may be damaged or destroyed; and to comply with all laws, ordinances, regulations, covenants, conditions, and restrictions affecting the property.

2. To pay before delinquent all lawful taxes and assessments upon the property; to keep the property free and clear of all other charges, liens, or encumbrances impairing the security of this Deed of Trust.

3. To keep all buildings now or hereafter erected on the property described herein continuously insured against loss by fire or other hazards in an amount not less than the total debt secured by this Deed of Trust. All policies shall be held by the Beneficiary, and be in such companies as the Beneficiary may approve and have loss payable first to the Beneficiary, as its interest may appear, and then to the Grantor(s). The amount collected under any insurance policy may be applied upon any indebtedness hereby secured in such order as the Beneficiary shall determine. Such application by the Beneficiary shall not cause discontinuance of any proceedings to foreclose this Deed of Trust. In the event of foreclosure, all rights of the Grantor(s) in insurance policies then in force shall pass to the purchaser at the foreclosure sale.

4. To defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of title search and attorney's fees in a reasonable amount, in any such action or proceeding, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

5. To pay all costs, fees, and expenses in connection with this Deed of Trust, including the expenses of the Trustee incurred in enforcing the obligation secured hereby and Trustee's and attorney's fees actually incurred, as provided by statute.

6. Should Grantor(s) fail to pay when due any taxes, assessments, insurance premiums, liens, encumbrances, or other charges against the property hereinabove described, Beneficiary may pay the same, and the amount so paid, with interest at the rate set forth in the note secured hereby, shall be added to and become a part of the debt secured in this Deed of Trust.

IT IS MUTUALLY AGREED THAT:

1. In the event any portion of the property is taken or damaged in an eminent domain proceeding, the entire amount of the award or such portion as may be necessary to fully satisfy the obligation secured hereby, shall be paid to Beneficiary to be applied to said obligation.

2. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to require prompt payment when due of all other sums so secured or to declare default for failure to so pay.

3. The Trustee shall reconvey all or any part of the property covered by this Deed of Trust to the person entitled thereto, on written request of the Grantor(s) and the Beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the Beneficiary or the person entitled thereto.

4. Upon default by Grantor(s) in the payment of any indebtedness secured hereby or in the performance of any agreement contained herein, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In such event and upon written request

of Beneficiary, Trustee shall sell the trust property, in accordance with the Deed of Trust Act of the State of Washington, at public auction to the highest bidder. Any person except Trustee may bid at Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (1) to the expense of the sale, including a reasonable Trustee's fee and attorney's fee; (2) to the obligation secured by this Deed of Trust; and (3) the surplus, if any, shall be distributed to the persons entitled thereto.

5. Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the property which Grantor(s) had or had the power to convey at the time of his/her/their execution of this Deed of Trust, and such as he/she/they may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchaser and encumbrancers for value.

6. The power of sale conferred by this Deed of Trust and by the Deed of Trust Act of the State of Washington is not an exclusive remedy; Beneficiary may cause this Deed of Trust to be foreclosed as a mortgage.

7. In the event of the death, incapacity, disability, or resignation of Trustee, Beneficiary may appoint in writing a successor trustee, and upon the recording of such appointment in the mortgage records of the county in which this Deed of Trust is recorded, the successor trustee shall be vested with all powers of the original trustee. The trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of an action or proceeding in which Grantor(s), Trustee, or Beneficiary shall be a party unless such action or proceeding is brought by the Trustee.

8. This Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but on his/her/their heirs, devisees, legatees, administrators, executors, and assigns. The term Beneficiary shall mean the holder and owner of the note secured hereby, whether or not named as Beneficiary herein.

Federal Asset Recovery, Inc.

William A Looney, President

STATE OF)
)
COUNTY OF)

I certify that I know or have satisfactory evidence that _____
(is/are) the person(s) who appeared before me, and said person(s) acknowledged that
(he/she/they) signed this instrument, on oath stated that (he/she/they) (is/are) authorized to
execute the instrument and acknowledged it as the _____ of
_____ to be the free and voluntary act of such party(ies) for the
uses and purposes mentioned in this instrument.

Dated:

Notary Public in and for
the state of _____
My appointment expires: _____

REQUEST FOR FULL RECONVEYANCE –

Do not record. To be used only when note has been paid.

TO: TRUSTEE

The undersigned is the legal owner and holder of the note and all other indebtedness secured by the within Deed of Trust. Said note, together with all other indebtedness secured by said Deed of Trust, has been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note above mentioned, and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you thereunder.

Dated: _____

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By: _____
Title: _____

EXHIBIT D

Subordination Agreement

After Recording Return to:
Joyce Mercui
Department of Ecology
P.O. Box 47775
Olympia, WA 98504-7775

SUBORDINATION AGREEMENT

Grantor: William A. Looney
Grantee: State of Washington, Department of Ecology
Legal: Tacoma Tidelands S ½ L 12, L 13 & 14, & N ½ L 15, B 62 SEG G 0662
Tax Parcel Nos.: 8950001971
Cross Reference: deed of trust under AFN 200604041033

KNOW ALL MEN BY THESE PRESENTS, That William A Looney, the owner and holder of that certain Deed of Trust bearing the date April 1, 2004, executed by Federal Asset Recovery, Inc., and recorded in the office of the County Auditor of Pierce County, State of Washington, on the 4th day of April, 2006, under Auditor's File Number 200604041033, affecting the property legally described in Exhibit A hereto does hereby agree that the lien of said Deed of Trust shall be subordinate to the interest of the State of Washington, Department of Ecology, under that Deed of Trust dated _____, 2006, executed by Federal Asset Recovery, Inc, and recorded in the records of Pierce County, Washington under Auditor's File Number _____

IN WITNESS WHEREOF, the grantor has hereunto set its hand and seal this _____ day of _____, 20____.

William A Looney

STATE OF WASHINGTON

County of

)
)
)

On this day personally appeared before me _____
_____, to me known to be the individual(s) described in and who executed the
within and foregoing instrument and acknowledged that he/she/they signed the same as
his/her/their free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this _____ day of _____, 20_____.

Notary Public in and for the State of
Washington, residing at _____
My appointment expires _____

EXHIBIT A

The south half of lot 12, all of lots 13 and 14, and the north half of lot 15, block 62, map of the Tacoma Tide Lands as surveyed and platted by the Board of tide Land Appraisers for Pierce County, according to the Plat filed for record September 14, 1895, in the office of the County Auditor, in Pierce County, Washington. Commonly known as 1147 East Dock Street, Tacoma WA 98402.

EXHIBIT E
Restrictive Covenant Thea Foss Waterway

When Recorded, Return To:
Kelly Cole
Office of Regional Counsel
U.S. EPA, Region 10
1200 Sixth Ave. ORC-158
Seattle, WA 98101

Document Title: **Restrictive Covenant**
Grantor: **Federal Asset Recovery, Inc.**
Grantee: **WA DEPARTMENT OF ECOLOGY**
Legal Description: **S ½ lot 12, all lots 13 and 14, N ½ lot 15, Blk 62 map of Tacoma
Tidelands according to plat filed September 14, 1895.**
Additional Legal Description: **SEE ATTACHMENT 1 A FOR FULL LEGAL
DESCRIPTION**
Assessor's Tax Parcel Number: **8950001971**

RESTRICTIVE COVENANT

This Restrictive Covenant is made this ____ day of _____, 2006, pursuant to RCW 70.105D.030(1)(f), and WAC 173-340-440(9) by Federal Asset Recovery, Inc and its successors and assigns (hereinafter "Grantor"), and the State of Washington, Department of Ecology ("Ecology"), and its successors and assigns (hereinafter "Grantee") for the benefit of the United States Environmental Protection Agency, its successors and assigns, ("EPA").

A portion of the property referenced above is subject to this Restrictive Covenant because Remedial Actions have been undertaken on the property pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601, et. seq., under a Consent Decree entered on May 9, 2003, titled the *United States v. Atlantic Richfield Company, et al.*, in the United States District Court for the Western District of Washington, Civil Action No. C03-5117 RJB, ("Consent Decree"). The objective of the remedial actions undertaken on the property is to protect human health and the environment.

The Consent Decree is part of an integrated settlement that includes two other consent decrees. One is between the EPA and Puget Sound Energy, Advance Ross Sub Company and PacifiCorp, ("Utilities"), and was entered by the federal District Court on May 9, 2003. The other consent decree is between EPA and the state Department of Natural Resources, which was entered by the federal District Court on December 17, 2003.

The property subject to this Restrictive Covenant is the portion of Tax Parcel 8950001971 that is located at 1147 East Dock Street, Tacoma, WA (hereafter, the "Property"), which is generally depicted as the cross-hatched area in the map attached as Attachment 2. This Restrictive Covenant is required because part of the Remedial Action capped and/or left residual contamination in place. The purpose of this Restrictive Covenant is to reduce potential exposure of marine organisms to contaminated sediments confined by capping, and to reduce potential exposure of marine organisms to contaminated sediments left in place in the Thea Foss and Wheeler Osgood Waterways.

The Grantor holds legal title to certain real property in the County of Pierce, State of Washington that is subject to this Restrictive Covenant. The parcel is legally described in Attachment 1, which is incorporated by reference into this Restrictive Covenant. The Grantor, as holder of legal title, does hereby declare that it has authority to enter into this Restrictive Covenant.

Grantor makes the following declarations as to limitations, restrictions, and uses on the Property. Furthermore, it is the intent of the Grantor that such declarations shall constitute covenants that run with the land, as provided by law, and be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the property.

Section 1. Remedial actions undertaken on the Property consist of: a slope cap (i.e., placement of capping material on the slope of the bank).

Section 2. The Grantor shall not conduct, or allow to be conducted any activity on the Property that may result in the release or exposure to the environment of contaminated sediment that is confined by the remedy, or creates a new exposure pathway, unless the proponent of the activity obtains the prior written authorization from EPA and secures all necessary local, state, and federal permits and approvals. Activities prohibited unless otherwise approved include, but are not limited to:

- 2.1 Any activity that alters, modifies, or removes remedial actions undertaken on the Property.
- 2.2 Piling removal and installation.
- 2.3 Dredging and excavation.

Section 3. Any other activity on the Property that may interfere with the Remedial Action, including Operation and Maintenance activities, is prohibited without prior notice to and approval of EPA.

Section 4. The Grantor shall give thirty (30) days advance written notice to EPA of the Grantor's intent to convey any interest in the Property. No conveyance of title, easement, lease or other interest in the Property shall be consummated by the Grantor without adequate and complete provision for the continued compliance with all required institutional controls, including this Restrictive Covenant.

Section 5. The Grantor shall notify and obtain approval from EPA, or its successor agency, before any use of the Property that is inconsistent with the terms of the Restrictive Covenant, or the Decree. EPA or its successor agency may approve any inconsistent use only after public notice and comment.

Section 6. The Grantor shall allow authorized representatives of EPA or its successor agency and the City of Tacoma the right to enter the Property at reasonable times for the purpose of evaluating compliance with the Consent Decree and other required plans, including the right to undertake Operation and Maintenance activities required under the Consent Decree, which includes gathering samples on the Property, and to confirm compliance with this Restrictive Covenant.

Section 7. The Grantor shall restrict leases of the Property to uses and activities consistent with this Restrictive Covenant and shall notify all lessees of the restrictions on the use of the Property. The Grantor shall include a copy of this Restrictive Covenant in any instrument conveying any interest in any portion of the Property, including conveyance of title, a lease, a license, an easement or other use authorizations.

Section 8. Within ten (10) days of the date this Restrictive Covenant is fully executed, the Grantor shall record this Restrictive Covenant with the Auditor's Office, Pierce County, State of Washington. Conformed copies of such recordings shall be forwarded to EPA, Region 10, Office of Regional Counsel at 1200 Sixth Avenue, ORC-158, Seattle, Washington 98101. The Grantor shall include a copy of this Restrictive Covenant in any instrument conveying any interest in any portion of the Property.

Section 9. If requested by EPA, the Grantor shall allow, at no cost, the placement and maintenance of signs on the Property regarding prohibited activities, vessel size and speed, and Waterway navigational buoys, markers and visual aids, to the extent such activities do not unreasonably interfere with the public's use and enjoyment of the Property.

Section 10. The Grantor reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit the use of the Property or be of any further force or effect. However, such an instrument may be recorded only if EPA, after public notice and opportunity to comment, concurs.

Section 11. The Grantor hereby confirms that this Restrictive Covenant is enforceable at law by EPA.

Section 12. The parties that must be notified by the terms of this Restrictive Covenant are:

Environmental Protection Agency
Office of Environmental Cleanup
1200 Sixth Avenue, ECL-111
Seattle, WA 98101

Joyce Mercuri
Department of Ecology
Southwest Regional Office
Toxics Cleanup Program
300 Desmond Drive
Lacey, WA 98503

If a proposed activity is within state-owned aquatic lands, then the Grantor shall also notify:

State of Washington
Department of Natural Resources
Aquatic Resources Program
1111 Washington St. SE
PO Box 47027
Olympia, WA 98504-7027

This Restrictive Covenant is executed by:

Federal Asset Recovery, Inc

By: William A. Looney
Its: President

STATE OF _____)
)ss
COUNTY OF _____)

On this _____ day of _____, 2006, personally appeared before me
_____ to me known to be the

of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she/was they were authorized to execute said instrument for said corporation and that the seal affixed is the corporate seal of the said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of

Washington, residing at _____
My appointment expires _____

Foss Institutional Controls/RC--No 8950001971 doc

ATTACHMENT 1

The south half of lot 12, all of lots 13 and 14, and the north half of lot 15, block 62, map of the Tacoma Tide Lands as surveyed and platted by the Board of tide Land Appraisers for Pierce County, according to the Plat filed for record September 14, 1895, in the office of the County Auditor, in Pierce County, Washington. Commonly known as 1147 East Dock Street, Tacoma WA 98402

ATTACHMENT 2

(Survey Depicting Area of Parcel Affected by Restrictive Covenant)